

hydrogel particles have a diameter of 0.005 to 10 mm.

30. (New) The skin cosmetic composition according to Claim 20, wherein said hydrogel particles have a breaking intensity of 5 to 25 kPa and a Young's modulus of 30 to 100 kPa.

31. (New) The skin cosmetic composition according to Claim 20, wherein the content of said hydrogel particles is 1-40% by weight.

32. (New) The skin cosmetic composition according to Claim 20, wherein said aqueous medium has a pH of 4 to 11.

REMARKS

Claims 2 and 3 have been amended to place them in more readable form and to change the dependency to new independent Claim 20. Claims 20-32 have been added to preferred embodiments. Basis for new Claim 20 may be found on page 5, lines 1-13 of the specification. Basis for new Claim 21 may be found on page 10, lines 5-8 of the specification. New Claims 22-28 are rewrites of Claims 6-10, 12 and 19 with the dependency ultimately on independent Claim 20. Basis for new Claim 29 may be found on page 10, lines 9-12 of the specification. Basis for new Claim 30 may be found on page 11, lines 22-25 of the specification. Basis for new Claim 31 may be found on page 18, lines 13-15 of the specification. Basis for new Claim 32 may be found on page 22, lines 7 and 8 of the specification. No new matter has been added into the amended claims or new claims.

It is noted that the examiner has not initialed all foreign references filed in the IDS of February 11, 2002 and listed on the PTO 1449 as being considered. It is requested that the Examiner initial references AR, AS, AT and AU on the PTO 1449 and return a copy to Applicants with the next Official Action.

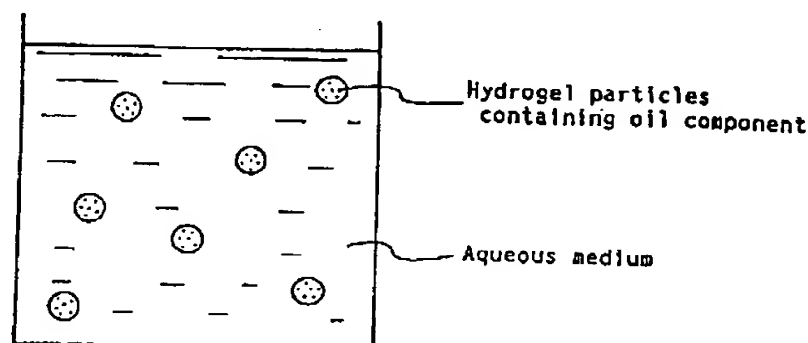
REQUEST FOR RECONSIDERATION

Claims 2, 3 and 20-32 are active in the case.

Claims 1-3 are rejected under 35 U.S.C. § 102(a), (b) and (e) as being anticipated by Noda et al.

It is submitted that Noda et al do not anticipate the present claims for the following reasons. As is clear from present Claim 20, the cosmetic composition of the present invention comprises hydrogel particles and an aqueous medium. The cosmetic composition of the present invention is illustrated in the following Figure 1.

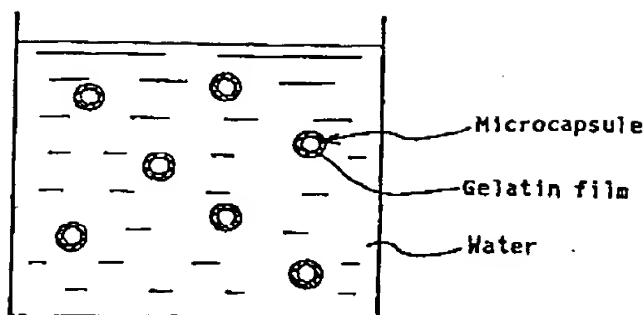
FIG. 1



The hydrogel particles of the present invention comprise a non-crosslinked hydrogel and an oil component, with the oil component dispersed in the non-crosslinked hydrogel, which hydrogel particles are further dispersed in the aqueous medium.

In contrast, the cosmetic composition disclosed by Noda et al comprises microcapsules dispersed in water. See Example 3-1, column 29, lines 24-36, especially lines 35 and 36; Example 3-2, column 30, lines 19 and 20; Example 3-3, column 31, lines 19 and 20; Example 3-4, column 31, lines 49 and 50; Example 3-5, column 32, lines 15 and 16; Example 3-6, column 32, lines 44 and 45 and Example 3-7, column 33, lines 10 and 11 of Noda et al. The cosmetic composition of Noda et al is illustrated in the following Figure 2.

FIG. 2



As is clear from the discussion in Examples 3-1 through 3-7 and the illustration in figure 2 of the formulation of the cosmetic composition of Noda et al, the cosmetic composition of Noda et al comprises microcapsules containing an oil component, which microcapsules possess a gelatin outer film, while the cosmetic composition of the present invention, as illustrated in figure 1, comprises hydrogel particles containing an oil component dispersed therein, which hydrogel particles have no outer film as the microcapsules of Noda et al and are further dispersed in an aqueous medium. Therefore, it is clear that the cosmetic composition of Noda et al contains microcapsules, not hydrogel particles, and, therefore, Noda et al do not anticipate the present claims.

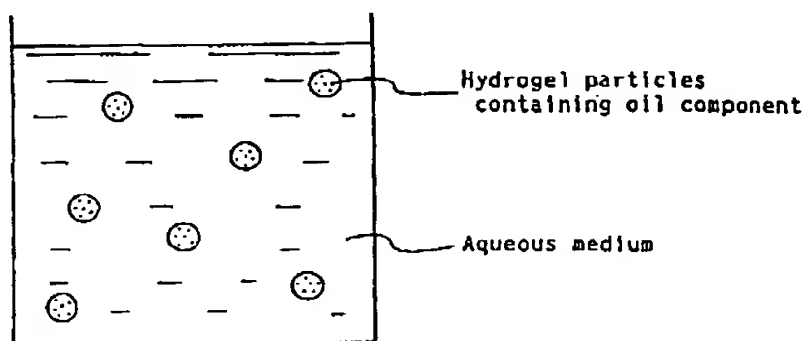
Further, the cosmetic composition of the present invention overcomes the defects of microcapsule cosmetic compositions, as discussed on page 2, line 21 through page 4, line 5 of the specification. When the cosmetic composition of Noda et al is applied to the skin, unpleasant residue of the gelatin outer film remains on the skin after the application of the cosmetic composition of Noda et al, which gives an unpleasant feeling to the skin. In contrast, the cosmetic composition of the present claims will not generate unpleasant residue on the skin after application of the cosmetic composition, because the hydrogel particles according to the present claims do not have an outer film on the surface, as is the case with the microcapsules of Noda et al. Therefore, as discussed above, the cosmetic composition of the present claims and the cosmetic composition of Noda et al are completely different and

the present claims are not anticipated by Noda et al.

Claims 1-3 are rejected under 35 U.S.C. §102(a) and (b) as being anticipated by EP 0900558.

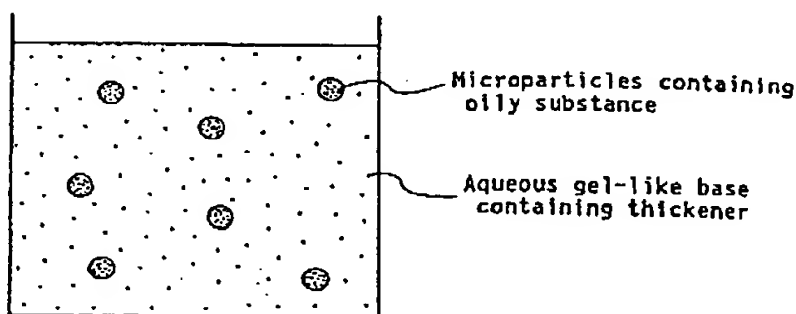
The claims are not anticipated by the European patent for the following reasons. The cosmetic composition of the present claims comprises hydrogel particles in an aqueous medium. The cosmetic composition of the present invention is illustrated in the following Figure 1.

FIG. 1



The hydrogel particles comprise a non-crosslinked hydrogel and an oil component and the oil component is dispersed in the non-crosslinked hydrogel, which hydrogel particles are further dispersed in the aqueous medium. In contrast, the European patent discloses microparticles mainly composed of an oily substance and an aqueous gel-like base containing a thickener in which the microparticles are dispersed. The cosmetic composition of the European patent is illustrated in the following Figure 3.

FIG. 3



As is clear from Figure 3, the microparticles are suspended in the aqueous gel-like base, because the aqueous gel-like base has a high viscosity. If an aqueous medium, such as water, is used in place of the aqueous gel-like base, the microparticles would float on the surface of the aqueous medium, and a suspension in which the microparticles are uniformly dispersed could not be obtained, because the aqueous medium has a low viscosity, and the specific gravity of the microparticles is lower than the aqueous medium due to the oily material used as a major component. Therefore, the aqueous gel-like base requires a thickener to avoid the floating of the microparticles to the surface.

Secondly, the manufacturing method of the microparticles set forth of page 9 of the translation of EP 0900558 says nothing about a formation of hydrogel particles like those of the present invention and clearly mentions nothing about the specific heating and cooling steps necessary to form a hydrogel particle set forth on pages 5, 6 and 12-19 of the specification. Therefore, it is clear that the microparticles of the European patent are not hydrogel particles like that of the present claims, nor do the microparticles of the European patent exist as a dispersion in an aqueous medium as in the present claims, but can only be dispersed by using an aqueous gel-like base containing a thickener. Finally, the cosmetic composition of the present claims can give a refreshing feel to the skin on application, because the cosmetic composition of the present claims contains an aqueous medium. However, the European patent would not give a refreshing feel from the product because the gel-like base containing the thickener is a viscous, high-density material. Therefore, it is clear that the claims are not anticipated by EP 0900558.

Claims 17-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Noda et al in view of Hegyí et al.

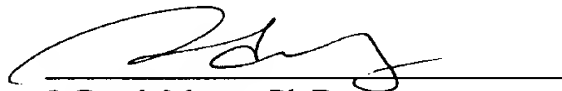
It is submitted that the claims distinguish over the combination of references for the

following reason. Claims 17-19 have cancelled and Claim 19 has been rewritten as Claim 28 and is now dependent upon new Claim 20. Since it is clear that new Claim 20, as discussed in the response to the anticipation rejection of Claims 1-3 over Noda et al, is not anticipated by Noda et al, Hegy cannot supply the deficiencies of Noda et al, since Hegy is cited only for the showing of visually distinct cosmetic compositions which contain transparent and colored agarose particles dispersed throughout the base. Therefore, the claims distinguish over the combination of references.

It is submitted that claims 2, 3 and 20-32 are allowable and such action is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER AND NEUSTADT, P.C.



J. Derek Mason, Ph.D.
Attorney of Record
Registration No. 35,270

Roland E. Martin
Registration No. 48,082



22850

TEL: (703) 413-3000
FAX: (703) 413-2220
I:\atty\rem\210354us-am.wpd

DOCKET NO.: 210354US0
SERIAL NO.: 09/892,577

MARKED-UP COPY OF AMENDMENT

IN THE CLAIMS

1. (Canceled).

2. (Amended) The skin cosmetic composition according to Claim [1] 20, wherein [the] said hydrogel [particle] particles [(A)] further [comprises] comprise an emulsifying agent or dispersing agent.

3. (Amended) The skin cosmetic composition according to Claim [1] 20, wherein [the] said non-crosslinked hydrogel is [of] agar or gelatin.

Claims 4-19 (Canceled).

Claims 20-32. (New).